height, width and span, or other defects, and which, after declaring this general rule, imposed upon the Secretary of War the duty of ascertaining what particular cases came within the rule prescribed by Congress, as well as the duty of enforcing the rule. To deny to Congress the authority to delegate to the executive branch of government the exercise in specific instances of a discretionary power, which from the nature of the case Congress could not itself exercise, would be, the courts say, "to stop the wheels of conduct of public business." In *Yick Wo* v. *Hopkins,* 118 U. S. 356, an ordinance forbade any person to carry on a laundry within the city without the consent of the board of supervisors, except in buildings of brick or stone. Plaintiff, a native of China, who had complied with all the existing regulations for the prevention of fire, was refused such consent by the board, upon his application. The ordinance was held unconstitutional, as it conferred upon the board arbitrary power, at its own will, to give or withhold consent as to persons or places, without regard to the competency of the persons applying or the propriety of the place selected for carrying on the business. This case, however, is distinguishable from the principal case. In *Yick Wo* v. *Hopkins, supra,* there was an arbitrary power in the board to grant or refuse consent, and not a conferring of a discretion to be exercised upon a consideration of the circumstances of each case. In the principal case, the rule of public policy, which is the essence of legislative action, had been determined by the legislature. What was left to the fire marshal was not the determination of what public policy demanded, but simply the ascertainment of what the facts in each case required to be done, according to the terms of the law. In England Parliament may confer upon administrative boards the power to arbitrarily decide, without hindrance from the courts, what method of application an Act of Parliament is to have. *Local Gov't Board* v. *Arlidge* [1915], A. C. 120. See also the article in 32 HARV. L. REV. 447.

CONSTITUTIONAL LAW—MAKING STATE MEDICAL ASSOCIATION THE STATE BOARD OF HEALTH, WITHIN THE POWER OF THE LEGISLATURE.—An act of the Alabama legislature making the State Medical Association the State Board of Health was attacked upon the ground that it was beyond the power of the legislature to confer the authority given upon a purely private corporation. *Held,* that the act was valid. *Parke v. Bradley* (Ala., 1920), 86 So. 28.

The court took the view that by virtue of the act the admittedly private association became a public board, and that the powers delegated were conferred upon the latter organization, and not upon the Medical Association as such. There was no dispute as to the power of the legislature to pass health measures and to create a board with administrative functions to carry out its regulations. The position of the court therefore seems conclusive as to the principal objection made to the act. A further objection was raised, however, conceding this view of the effect of the act was correct, that the members of the board so designated were in effect necessarily selected by members of the State Medical Association acting in their private

capacities, governed only by the rules of the association, and responsible neither to the state nor to the people. This raises what seems to be the real question involved in the case, namely, whether or not a legislature can delegate to a private corporation or association the power to appoint members of a public board where the members of the private organization possess some special skill and training which peculiarly fits them to select proper incumbents for the offices. In the principal case this question is indirectly presented, and the court is able to make the somewhat metaphysical counter that the individuals so selected become members of the association only, and that their subsequent transition to the public board results not from the election but from the designation of the association as the state board. The court is not content to rest upon this somewhat dubious ground, however, but proceeds to review the authorities which have considered the proposition directly and have held that such a delegation of the power to appoint is valid. The following cases have held acts valid providing for the appointment of medical examiners or members of state boards of health by private corporations or associations: *Scholle* v. *State*, 90 Md. 729; *Ex parte Gerina*, 143 Cal. 412; *Brooks* v. *State*, 88 Ala. 122; *Ex parte Frazer*, 54 Cal. 94. Acts delegating the appointment of state dental examiners to dental associations have also been sustained. *Wilkins* v. *State*, 113 Ind. 514; *Overshiner* v. *State*, 156 Ind. 187. In *Bullock* v. *Billheimer*, 175 Ind. 428, it was held that the appointment of members of the advisory committee of the agricultural station could be delegated to various incorporated agricultural societies. In *Ex parte McManus*, 151 Cal. 331, an act of the legislature provided for a state board of architecture, the members of which were to be chosen by the governor from two associations of architects. There the question of the validity of a delegation of the appointive power was involved only indirectly. Nevertheless, the court upheld the general principle that this power may be given to private institutions. In the ordinary state constitution there is no direct inhibition against such legislative action. Frequent objections to such legislation have been that it confers special privileges upon a limited class, and that in the case of corporations it confers corporate powers by special act, contrary to the usual constitutional provision prohibiting this. It has been held not to be a special privilege within the constitutional restriction because it is not exercised for the benefit of the particular individuals but for the general public. *Ex parte Gerina, supra; Ex parte Frazer, supra.* It has also been held not to be a corporate power. *Ex parte Gerina, supra; Ex parte Frazer, supra; Overshiner* v. *State, supra.* In almost all of the cases involving the point courts have stressed the practical value of having the members of such boards selected by skilled bodies having a peculiar interest in the successful administration of the law. This consideration seems to provide an adequate safeguard for a practice which might easily become somewhat dangerous. Judging from the comparatively few cases the practice of delegating such appointive power is still in its early stages of development, but it is worthy of note that in most of the cases cited the institutions attacked had long been in existence. In the prin-

cipal case the association had acted as the state board of health in accordance with the act for forty-five years without question.

CONTRACTS—COMMUNICATION OF OFFER—MISTAKE IN TELEGRAM.—Butler wired an offer to buy 50 shares of stock, the telegram concluding, "Wire confirmation." Foley wired acceptance as to 44 shares. Butler wired confirmation of the 44. Foley, defendant, failed to deliver. He based his defense on the fact that the telegraph company left the word "subject" out of his telegram by mistake, and that, since Butler asked for an answer by wire, he made the telegraph company his agent and took the risk of mistake. *Held,* Foley's counter proposition was an offer, of which Butler's second message was an acceptance, and as the offerer makes the telegraph company his agent, Foley took the risk of mistake and is responsible on the contract. *Butler* v. *Foley* (Mich., 1920), 179 N. W. 34.

Ayer v. *Western Union Tel. Co.*, 79 Me. 493; *Western Union Tel. Co.* v. *Shotter*, 71 Ga. 760, and *Sherrerd* v. *Western Union Telegraph Co.*, 146 Wis. 197, are strong authorities for the doctrine that if the offerer communicates his offer by telegram he makes the telegraph company his agent, and is bound by the offeree's acceptance of the offer as delivered, providing the offeree had no reasonable grounds for knowing there was a mistake. An extreme application of the doctrine is seen in *Price Brokerage Co.* v. *C., B. & Q. R. R. Co.* (Mo., 1917), 199 S. W. 732, where the mistake changed the the price of potatoes from $1.35 to .35 per cwt., there being no potatoes on the market at anything like the latter figure, yet the court held the sender of the telegram bound by the contract. See, however, *Germain Fruit Co.* v. *Western Union Tel. Co.*, 137 Cal. 598. In *Durkee* v. *Vermont Central R. R. Co.*, 29 Vt. 127, and *Magie* v. *Herman*, 50 Minn. 424, both cited and relied upon in the principal case, the question being which copy of the message was primary evidence, it is said that the one who first uses the wire in a transaction makes the telegraph company his agent. But the principal case must stand on the narrower ground that the offerer makes the telegraph company his agent, irrespective of previous messages. The strongest argument for the above doctrine is to be found in the matter of commercial convenience. The cases opposed, which are at least as numerous and are stronger in technical legal reasoning, deny that the telegraph company is the agent of the offerer with power to make a different contract from that which he intended. If agent at all, it is only a special agent with specific authority to deliver that particular message and no other. These cases give the sender an action in contract or tort against the telegraph company, and if he is injured by the mistake, the sendee also has an action in tort against the company, but the sender is not bound by the sendee's acceptance of the changed offer. *Henkel* v. *Pape*, L. R. 6 Exch. 7; *Strong* v. *Western Union Tel. Co.*, 18 *Idaho* 389, 409; *Shingleur* v. *Western Union Tel. Co.*, 72 Miss. 1030; *Pepper* v. *Western Union Tel. Co.*, 87 Tenn. 554; *Postal Tel. & Cable Co.* v. *Schaefer*, 110 Ky. 907; *Mount Gilead Cotton Oil Co.* v. *Western Union Tel. Co.*, 171 N. C. 705. See also 1 MICH. L. REV. 588. Undoubtedly, the